

**KETUA PENGARAH PERKHIDMATAN AWAM & ANOR
v. ALAGAN MAYALAGAN**

COURT OF APPEAL, PUTRAJAYA
YAACOB MD SAM JCA
RAVINTHRAN PARAMAGURU JCA
DARRYL GOON SIEW CHYE JCA
[CIVIL APPEAL NO: W-01(A)-6-01-2019]
30 SEPTEMBER 2021

Abstract – *The Port Klang Authority ('PKA'), as a statutory body established under the Port Authorities Act 1963, has a separate salary scheme for its employees from that of the general public service. Even if a statutory body that is funded by the Government and is subject to Ministerial direction could be broadly considered a governmental entity for the purpose of human resource matters, including the service and salary scheme, it must be distinguished from the general public service. 'Lembaga Pelabuhan Kelang – Pemindahan Kepada Tangga Gaji Baru 1.7.1980 Kumpulan D' and 'Nama Skim Perkhidmatan Ad Hoc' are two tables that are irrelevant to a federal officer who remained in the general public service at the time of his retirement and who elected not to join the service of the PKA. The 'Salary Transfer Multiplication Table' is applicable for the purpose of pension re-adjustment in respect of abolished positions in the Government service.*

ADMINISTRATIVE LAW: *Judicial review – Appeal against – Appeal by Director-General of Public Services Department ('PSD') – Applicant joined general public service as crane driver – Applicant declined to join service of Port Klang Authority as crane driver (portal) – Applicant compulsorily retired as post abolished – Pension calculated based on last drawn monthly salary in general public service as crane driver (portal) – Coming into force of Pensions Adjustment Act 1980 provides for pensions to be increased by 2% annually – Applicant's last drawn salary adjusted based on salary grade of D38 in Government service – Whether pension should be adjusted based on position of crane driver (high portal), grade D5 – Applicant's appeals to PSD rejected – Applicant appealed to High Court against decision of PSD – High Court allowed re-determination of pension payable – Whether decision valid, rational or proper – Rules of Court 2012, O. 53*

The respondent joined the service of Keretapi Tanah Melayu (Malayan Railways) in 1938, which was then part of the general public service, as a crane driver. He was then seconded to serve in a statutory body, the Port Klang Authority ('PKA'), as a crane driver (portal), but opted not to. The respondent was compulsorily retired in 1971, pursuant to s. 10G of the Pensions Ordinance 1951, and his pension was calculated based on his last drawn monthly salary in the general public service as a crane driver (portal),

- A which was RM360. With the coming into force of the Pensions Adjustment Act 1980 on 1 July 1980, which provides for pensions to be increased by 2% annually, pursuant to s. 3(1), the respondent's last drawn salary was adjusted to RM510, based on the salary grade of D38 in the Government service. This was not the prevailing salary grade for the respondent's former position of crane driver (portal) as that post had been abolished. Aggrieved, the respondent was of the view that (i) his last drawn salary was based on D38 which was the salary grade for the post of crane driver (low carriage), a position which he never held; and (ii) his pension should be adjusted based on the position of a crane driver (high portal), grade D5. This prompted the respondent to launch a series of appeals with the Pensions Divisions of the Public Service Department ('PSD') between 1982 and 2016; all of which were rejected. The respondent then initiated an application for judicial review at the High Court. The High Court Judge ('HCJ') held that, *inter alia*, (i) it was procedurally improper to adjust the respondent's pension based on a lower position than that was held by him at the time of his retirement; (ii) the respondent's last drawn salary should be adjusted based on the salary grade of D5 for crane driver (high portal), based on two tables titled 'Lembaga Pelabuhan Kelang – Pemindahan Kepada Tangga Gaji Baru 1.7.1980 Kumpulan D' and 'Nama Skim Perkhidmatan *Ad Hoc*' ('tables'); (iii) the PSD took into account irrelevant consideration namely, a letter which contained an opinion that 'high' in crane driver (high portal) meant greater skill ('letter'); (iv) certain relevant information was not taken into account by the PSD in making its decision, namely, the written statement by the respondent's former supervisor that was furnished to the PSD that (a) the portal cranes used at PKA at the material time were portal cranes and high portal cranes; and (b) crane drivers could be asked to work on either crane, depending on the discretion of the respective Port Officers; and (iv) the PSD was wrong to state that the salary code for crane driver (portal) was D38 whereas that was the salary code for crane driver (low carriage).

Held (allowing appeal; setting aside decision of High Court)

- G **Per Ravinthran Paramaguru JCA delivering the judgment of the court:**
- (1) The HCJ erred in considering the tables to conclude that the respondent should have been placed on a higher grade for the purpose of pension re-adjustment. The tables, which depicted job designations and respective salary grades, were peculiar to the PKA service. The PKA, as a statutory body established under the Port Authorities Act 1963, had a separate salary scheme for its employees from that of the general public service. Even if a statutory body that is funded by the Government and is subject to Ministerial direction could be broadly considered a governmental entity, for the purpose of human resource matters, including the service and salary scheme, it must be distinguished from the general public service. As the respondent elected

not to join the service of the PKA, the tables referred to by the HCJ were irrelevant for the purpose of re-adjustment of the pension of the respondent who remained in the general public service at the time of his retirement. (paras 20 & 21)

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- (2) The letter was one of, at least, four letters written by various officers of the PSD in which reasons were given for the rejection of the respondent's appeal to be placed on the salary grade of D5 for the purpose of pension re-adjustment. In all the other letters, the consistent reason given was that, under the Pensions Division's Salary Transfer Multiplication Table, the position of crane driver (portal) was under the salary code of D38, not D5. This reason was consonant with the indisputable fact that the respondent had returned to the general public service scheme immediately prior to his compulsory retirement. Therefore, it was obvious that the PSD's reason for rejecting the respondent's appeals was not because of the opinion contained in the letter. The reason for rejecting the respondent's appeals was that he was subjected to the PSD's method of pension re-adjustment where the last drawn salary was 'mapped' to the salary grade of a similar position that still existed in the general service. The letter was extraneous and of no consequence insofar as the decision-making process in respect of the respondent's appeals were concerned. There was no doubt that the said opinion was unsustainable but there was no basis to conclude that the rejection of the respondent's appeal was entirely based on this erroneous understanding of the English language. (paras 22 & 23)

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- (3) The opinion contained in the written statement of the respondent's former supervisor was, essentially, that crane drivers at the material time, including the respondent, could be asked to work on 'portal cranes and high portal cranes'. However, the important point that was overlooked was that the pension of an officer in the public service is calculated based on his last drawn salary in accordance with his job designation and not what additional work he could have been asked to perform during his service. At the time of his compulsory retirement, the respondent held the position of crane driver (portal) and his pension was calculated based on his last drawn salary. The respondent did not raise any issue in 1971 that it was wrongly calculated or that his pension should have been based on the position of crane driver (high portal). The written statement that the respondent had also worked on 'high portal cranes' could not be relevant. (para 24)

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- (4) The HCJ's conclusion, that the PSD was wrong to state that the salary code for crane driver (portal) was D38 whereas that was the salary code for crane driver (low carriage), was based on one of the PSD's letters in rejecting the respondent's appeal. In this letter, it was stated that the position of crane driver (portal) was placed in D38. However, the PSD did not say that the respondent was placed in the crane driver (low

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- A carriage) category at D38 for the purpose of pension re-adjustment. The position of crane driver (portal), including crane driver (low carriage) did not exist in the general public service in 1981. The position of crane driver (low carriage) at D38 only existed in the PKA service. The approximation by the PSD, of the abolished position of crane driver (portal) with the salary of D38 in the general public service, which was mentioned in the above letter, should not be equated with the post of crane driver (low carriage) at the salary grade of D38 in the PKA service. (paras 25 & 26)

Case(s) referred to:

- C *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 373 (*refd*)

Legislation referred to:

Pensions Adjustment Act 1980, s. 3(1)

Port Authorities Act 1963, s. 13

For the appellant - Liew Horng Bin; SFC

- D *For the respondent - M Manoharan & Anis Salihah Abdul Malek; M/s M Manoharan & Co*

[Editor's note: For the High Court judgment, please see Alagan Mayalagan v. Ketua Pengarah Perkhidmatan Awam & Anor [2019] 3 CLJ 701 (overruled).]

- E *Reported by Najib Tamby*

JUDGMENT

Ravinthran Paramaguru JCA:

- F **Introduction**

[1] This is an appeal by the Director General of the Public Services department (“the first appellant”) against, *inter alia*, the issue of a *mandamus* by the High Court for the re-determination of the pension payable to a Federal Officer (“the respondent”) based on a higher salary grade.

- G **Background Facts**

- H [2] The respondent joined the service of the Keretapi Tanah Melayu (Malayan Railways) on 29 April 1938 which was then part of the general public service. He worked as a crane driver. Subsequently he was seconded to serve in a statutory body, ie, the Port Klang Authority (“the PKA”) as a crane driver (portal). However, he did not join the service of the PKA although given the option to do so in 1963 and 1966. He was compulsorily retired on 5 March 1971 under s. 10G of the Pensions Ordinance 1951. There was no vacancy for him in the Government service as his post in the public service had been abolished. He was 52 years old at that time and he had served a total of 32 years. His pension was calculated based on his last drawn monthly substantive salary in the general public service as a crane driver (portal) which was RM360 under the Suffian Salary Scheme.

[3] The appellant did not raise any issue about his pension since his retirement until the coming into force of the Pensions Adjustment Act 1980 on 1 July 1980 (“the PAA”). Section 3(1) of the PAA provided for pensions to be increased by two per cent annually. It reads as follows:

(1) Pensions and other benefits granted to officers and their dependants under any written law shall be adjusted annually by an increment of two percent in accordance with the provisions of this Act and shall be paid or be payable with effect from January of each year.

[4] To give effect to the adjustment provided by the PAA, the respondent’s last drawn salary was adjusted to RM510 for the purpose of calculating his pension. The salary of RM510 was based on the salary grade of D38 in the Government service although it was not the prevailing salary grade for the respondent’s former position of crane driver (portal) as that post had been abolished. The respondent was not happy that his pension was adjusted based on the salary grade D38. He was of the view that his pension should be adjusted based on the position of a crane driver (high portal) at the salary grade D5. He was aggrieved that during the pension readjustment exercise, his last drawn salary was based on D38 which he said was the salary grade for the post of crane driver (low carriage); a position which he never held. He then launched a series of appeals with the Pensions Divisions of the Public Service Department (“PSD”) between 1982 and 2016.

[5] The respondent’s first appeal to the PSD was rejected by a letter dated 21 August 1982 from the PSD on the ground that under the Pension Division’s Sifir Pemindahan Gaji (Salary Transfer Multiplication Table), the position of crane driver (portal) is under the salary code of D38 and not D5.

[6] The respondent appealed against the rejection of his first appeal by the PSD. After considering further evidence, the PSD in a letter dated 13 May 2008, again rejected the respondent’s appeal on the ground that “high portal” reflected “a higher skill to undertake more complex works and responsibilities”. Yet another appeal was made by the respondent on 3 July 2008. On 29 August 2012, the PSD also rejected this appeal of the respondent on the basis that he had retired as crane driver (portal) and not as a crane driver (high portal). The last appeal that the respondent made to the PSD for his pension to be readjusted based on the last drawn salary of crane driver (high portal) at D5 was through his solicitors on 15 June 2016. This appeal was also rejected on 5 September 2016 on the ground that the last position he held was that of a crane driver (portal). The respondent then responded by filing the instant application for judicial review on 5 September 2016.

Decision Of High Court

[7] The learned High Court Judge made certain findings based on the affidavit evidence before reaching her conclusion. Some of the salient findings are set out in the following paragraphs.

- A [8] The learned High Court Judge considered the argument of the respondent that his pension should have been based on the position of crane driver (high portal) at the salary grade of D5. Her Ladyship found that for the purpose of the PAA, the respondent's last drawn salary was adjusted on 1 July 1980 under the Jawatan Kuasa Kabinet II Salary Scheme ("JKK II")
- B to be equivalent to that of crane driver (low carriage) at salary grade D38. The learned judge noted that the salary grade of D5 for a crane driver (high portal) and D38 for a crane driver (low carriage) existed under the JKK II. At the same time, she noted that the position of crane driver (portal) was not included in the JKK II Salary Scheme. The learned judge referred to two
- C salary grade tables exhibited in the affidavits to support her findings. The said two tables were reproduced in her judgment. The first table is titled "Lembaga Pelabuhan Kelang - Pemindahan Kepada Tanggagaji Baru 1 July 1980 Kumpulan D". The second table is titled "Nama Skim Perkhidmatan *Ad Hoc*". For the above reasons, at para. [15] of her judgment, she found that it was wrong of the PSD to state that the salary code for a crane driver
- D (portal) is D38 as that was the salary code for a crane driver (low carriage).
- [9] Her second reason for granting the orders sought by the respondent was that during the series of appeals launched by the respondent, the PSD sought further information from other bodies such as the Keretapi Tanah
- E Melayu Bhd or KTMB (the former Malayan Railways that was corporatised since 1990) and its workers' union. The Human Resource Department advisor of KTMB, who obviously lacked knowledge of the English language, boldly ventured his opinion on the meaning of "portal" and "high portal". The said advisor told PSD that "high portal" means "high skill" and "portal" means "normal experience" or "low skill". Unfortunately, the PSD officer
- F who rejected the second appeal of the respondent in her letter dated 13 May 2008 did not possess better command of the English language and repeated the opinion of the said KTMB's advisor. The opinion of the Human Resource Department advisor of KTMB was criticised by the learned High Court Judge. For this reason, the learned High Court Judge found that the decision
- G of the first appellant was irrational and unreasonable as irrelevant information had been taken into account in the decision-making process.
- [10] Her Ladyship also found that certain relevant information was not taken into account by the PSD. The respondent's former supervisor was one
- H Mr Paramas Varan Kandiah who held the position of assistant wharf superintendent at the Port Swettenham Authority (prior to being renamed as Port Klang authority). Mr Kandiah said in a written statement that was furnished to the PSD that the portal cranes used at Port Swettenham at the material time were "portal cranes and high portal cranes" and that crane drivers can be asked to work on either crane depending on the discretion of
- I the respective port officers.

[11] The other findings and reasons given by the learned High Court Judge are as follows. Her Ladyship found that it was procedurally improper to adjust the respondent's pension based on a lower position than that held by him at the time of his retirement. She also found that the PSD had sufficient information to readjust the respondent's pension to D5 but did not do so. In the premises, she granted the following reliefs:

- (i) An order of *certiorari* to quash the decision of the first respondent to reject the applicant's appeal for an adjustment of his pension based on last drawn salary equivalent to grade D5 (JKK) from 1 July 1980 as stated by Puan Fazidah binti Ahmad Puat in a letter dated 5 September 2016 from the Bahagian Pasca Perkhidmatan, Jabatan Perkhidmatan Awam Malaysia.
- (ii) An order of *mandamus* directing the first respondent:
 - (a) to redetermine the proper amount of pension payable to the applicant based on the last drawn salary for the position of crane driver (high portal) at the salary grade of D5 (JKK); and
 - (b) upon the redetermination under sub-paragraph. (ii)(a) above, to pay the proper amount of pension to the applicant together with arrears from 1 July 1980.

Contention Of Parties

[12] We shall repeat some of the earlier facts to give context to the appellant's argument which we summarise as follows. The appellant was always an employee in the service of KTM which at the material time was part of the general public service. He was seconded to the service of the authority that managed Port Klang which was known as Port Swettenham at the material time. In 1963, the said authority became a statutory body known as Port Klang Authority or Lembaga Pelabuhan Klang. The respondent was given the option of joining the service of the PKA but he declined. He again rejected the offer in 1966. He was compulsorily retired in 1971 as his post of crane driver (portal) in the Government service was abolished.

[13] In respect of the alleged prejudice suffered by the respondent when his pension was readjusted in 1980, the learned Senior Federal Counsel ("SFC") said as follows by referring to the PSD documents exhibited in the affidavits. As the position of crane driver (portal) was abolished by 1971, the PSD looked at the next highest last drawn salary in the industrial and manual group ("IMG") which is the group in which the abolished post of crane driver (portal) was placed. This is because at the time of retirement of the respondent, the current grading system of a position (sistem gred jawatan) was not practised. The respondent's service was based on designation and a corresponding salary. Salary grade D38 and D5 was introduced only under the JKK II Salary Scheme. The next highest last drawn salary when compared to the retirement salary of RM360 of the respondent corresponded to a tier in the salary grade of D38.

- A [14] The learned SFC pointed out by reference to PSD documents that this D38 salary grade was not in respect of crane driver (portal) or crane driver (low carriage) position as it had been abolished in the Government service. It was in respect of other positions in the IMG. Thus, the salary grade of the position held by the respondent prior to his retirement was merely “mapped”
B to the D38 grade in 1981. On other hand, in the PKA service scheme, the post of crane driver (low carriage) and crane drive (high portal) continued to exist at the salary grades of D38 and D5 respectively. The learned SFC also pointed out that the salary grade D38 in the Government service for other positions in the IMG and D38 for the crane driver (low carriage) in the PKA
C service did not attract the same salary as separate salary schemes were in place. Employees in the Government service were under the Suffian Salary Scheme whereas employees in statutory bodies were paid under the Harun Salary Scheme. The learned SFC added that the D38 salary grade in the Government service (for positions other than the abolished crane driver (portal) position) and the D38 for the crane driver (low carriage) in the PKA
D scheme that continued to exist had caused confusion in this case.

- [15] Learned SFC submitted that the respondent’s requests to the PSD since 1980 was essentially for his last drawn salary to be increased based on the D5 salary grade because crane drivers who held the position of crane driver (portal) in the PKA service were given such an adjustment. He said
E that the PSD was unable to accede to his request for valid reasons. The respondent did not join the service of the PKA in 1963 and 1966 and was therefore compulsorily retired. In the premises, as his original post of crane driver (portal) in the Government service had been abolished, his last drawn salary could only be adjusted by reference to the next nearest salary scale of
F a similar position in the public service that corresponded to his last drawn salary. It cannot be done by reference to the PKA salary grades as he did not join its service.

- [16] In the oral and written submissions of counsel for the respondent, no distinction was made between the general public service scheme and the statutory service scheme of PKA. Learned counsel for the respondent
G acknowledged that the last held position of the respondent was crane driver (portal) which was abolished, was not mentioned in the JKK II. The position of crane driver (high portal) also did not exist at the time of the respondent’s retirement. The only crane driver positions were crane driver (portal) and
H crane driver (low carriage). Thus, he argued that it was procedurally improper to adjust the respondent’s pension based on the last drawn salary of crane driver (low carriage) at D38. He also submitted that the PSD should have taken into account the written statement of the then supervisor of the respondent that portal cranes at the PKA at the material were both portal
I cranes and high portal cranes.

Our Decision

[17] The learned High Court Judge found that there was procedural impropriety in the PSD's rejection of the respondent's appeals. Her Ladyship opined that his last drawn salary should be adjusted based on the salary grade of D5 which is meant for crane driver (high portal). Her first reason is based on the two tables that were referred to earlier. The first table is the PKA table on "pemindahan kepada tanggagaji baru" which is reproduced below.

LEMBAGA PELABUHAN KLANG
Pemindahan Kepada Tanggagaji Baru 1 Julai 1980
Kumpulan 'D'

Nama Jawatan	Kod Gaji
Konsol Operata Kanan	D1
Pomen Kapal	D1
Konsol Operata	D3
Penyelia Mesin Operata	D3
Pemandu Keren (Straddle Carrier/Kontena)	D3
Pemandu Keren (Kapal Korek)	D3
Serang Peringkat Khas	D3
Pemandu Injin Peringkat Khas	D3
Pemandu Kren (High Portal)	D5
Serang I	D7
Pemandu Injin I	D7
Juruteknik Muda	D10
Opereta Mesin Kira	D12

[18] The second table is in respect of the *ad hoc* service scheme established for PKA and the respective salary codes:

Nama Skim Perkhidmatan Ad Hoc	Kod Gaji
Pemandu Kren (Kapal Korek)	D3
Pemandu Kren (Jentry Bulk)	D3
Pemandu Kren (High Portal)	D5
Pemandu Jentera Pemunggah	D35
Pemandu Kren (Low Carriage)	D38

(emphasis added)

[19] The learned High Court Judge noted that in the first table dated 1 July 1980, the position of crane driver (high portal) is found whereas in the second table dated 25 March 1992 found in the PSD circular issued to Secretaries of Ministries and Head of Department, the positions of crane driver (high portal) at D5 and crane driver (low carriage) at D38 are found. In the later part of the judgment, she found that the PSD erred in readjusting his pension based on the last drawn salary of a crane driver (low carriage) at D38 instead of a crane driver (high portal) at D5.

A [20] With respect, we agree with the learned SFC that the learned High
Court Judge had erred in considering the said tables in the first place to
conclude that the respondent should have been placed on a higher grade for
the purpose of pension readjustment. Our reasons are as follows. The said
B tables that depict job designations and respective salary grades are peculiar
to the PKA service. From the letters and circulars found in the exhibits, it
is evident that the PKA as a statutory body established under the Port
Authorities Act 1963 has a separate salary scheme for its employees from
that of the general public service. In fact, in the affidavit-in-support, the
respondent referred to the higher salaries received by PKA crane drivers
C compared to crane drivers in the public service.

[21] Learned counsel for the respondent argued that the PKA service
scheme should also be considered “Government service”. This argument is
not tenable in our view. We note that the Port Authorities Act 1963 (Revised
1992) established the PKA and s. 13 of the Act allows it to appoint its own
D officers and staff. The various documents exhibited in the affidavits including
the two above-mentioned tables point to the PKA having its own service
scheme. In the premises, even if a statutory body that is funded by the
Government and is subject to Ministerial direction can be broadly
considered a governmental entity, for the purpose of human resource matters
E including the service and salary scheme, it must be distinguished from the
general public service. As the respondent in the instant case elected not to
join the service of the PKA, the two tables referred to by the learned High
Court Judge are irrelevant for the purpose of readjustment of the pension of
the respondent who remained in the general public service at the time of his
retirement.

F [22] In our view the learned High Court Judge committed another error
when she held that the PSD took into account an irrelevant consideration in
making its decision. It must be recalled that the reason given for the rejection
of the appeal of the respondent by the PSD in its letter dated 13 May 2008
G was because of the opinion of the KTMB’s Human Resource Department
advisor that “high” in crane driver (high portal) meant greater skill. There
is no doubt that the said opinion is unsustainable but there was no basis to
conclude that the rejection of the respondent’s appeal was entirely based on
this erroneous understanding of the English language. This letter was only
one of at least four letters written by various officers of the PSD in which
H reasons were given for the rejection of the respondent’s appeal to be placed
on the salary grade of D5 for the purpose of pension readjustment.

[23] In all the other letters, including the first letter in which the appeal was
rejected in 1982, the consistent reason given was that under the Pension
Division’s Sifir Pemindahan Gaji (Salary Transfer Multiplication Table), the
I position of crane driver (portal) is under the salary code of D38 and not D5.
This reason is consonant with the indisputable fact that the respondent had

returned to the general public service scheme immediately prior to his compulsory retirement. Thus, it is obvious that the PSD's reason for rejecting the appeals of the respondent was not because of the opinion of the KTMB's Human Resources Department advisor or the one-off ill-advised letter of the PSD officer who incorporated the said opinion in her letter. The reason was that he was subject to PSD's method of pension readjustment where that the last drawn salary was "mapped" to the salary grade of a similar position that still existed in the general public service. Thus, the PSD's letter dated 15 May 2008 was extraneous and of no consequence insofar as the decision-making process in respect of the respondent's appeals were concerned.

[24] In our respectful opinion, the third error that the learned High Court Judge committed was to hold that the written statement of the respondent's supervisor (Mr Kandiah) should have been taken into account by the PSD in making its decision to reject the respondent's appeal and that such failure resulted in procedural impropriety. Our reasons are as follows. The opinion of the Mr Kandiah was essentially that crane drivers at the material time including the respondent can be asked to work on "portal cranes and high portal cranes". However, the important point that was overlooked was that the pension of an officer in the public service is calculated based on his last drawn salary in accordance with his job designation and not what additional work he could have been asked to perform during his service. In the instant case, at the time of his compulsory retirement, the respondent held the position of crane driver (portal) and his pension was calculated based on his last drawn salary. The respondent did not raise any issue in 1971 that it was wrongly calculated or that his pension should have been based on the position of crane driver (high portal). In the premises, the written statement of the Mr Kandiah that the respondent had also worked on "high portal cranes" cannot be relevant.

[25] The fourth error committed by the learned High Court Judge was that Her Ladyship held that the PSD was wrong to state that the salary code for crane driver (portal) was D38 whereas that was the salary code for crane driver (low carriage). This conclusion is found in para. [15] of Her Ladyship's judgment. The learned judge came to this conclusion because of the first letter issued by the PSD on 21 August 1982 when it rejected the appeal of the respondent. The letter reads in part as follows:

- (4) Mengikut rekod-rekod yang disimpan di pejabat ini En Mayalagan Alagan telah bersara pada 5.5.1971 dan gaji akhir yang beliau terima ialah \$360.00 (Skim Suffian). Berdasarkan prinsip-prinsip seperti dinyatakan di perenggan 3, gaji akhir \$360.00 dalam Skim Suffian dipindah kepada mata gaji \$510.00 dalam Skim baru iaitu Skim Jawatankuasa Kabinet II melalui Skim Harun dan Skim Jawatankuasa Kabinet I.

- A (5) Berhubung dengan tuntutan beliau bagi perletakan ke Kod D5 Crane Driver Portal dengan gaji maksima \$720.00, dukacita dimaklumkan bahawa mengikut Sifir Pemindahan Gaji di pejabat ini, jawatan tersebut adalah di bawah Kod Gaji D38 dan bukan D5 sebagaimana yang dinyatakan. Oleh yang demikian, penyelarasan yang telah dibuat adalah betul dan teratur.
- B [26] In this letter, it is stated that the position of crane driver (portal) was placed in D38. However, it must be noted that PSD did not say that the respondent was placed in the crane driver (low carriage) category at D38 for the purpose of pension readjustment. As pointed out by the learned SFC with the aid of the circulars and tables relevant to the general public service (and not the PKA service), the position of crane driver (portal) including crane driver (low carriage) did not exist in the general public service in 1981. In the tables exhibited by the respondent, the position of crane driver (low carriage) at D38 only existed in the PKA service. This was the reason the PSD “mapped” the salary grade of the respondent by comparing his last drawn pay to other similar positions in the IMG with the aid of the Sifir Pemindahan Gaji (Salary Transfer Multiplication Table) to readjust the pension of the respondent. As the learned SFC submitted, the approximation by the PSD of the abolished position of crane driver (portal) with the salary grade of D38 in the general public service, which is mentioned in the above-mentioned letter should not be equated with the post of crane driver (low carriage) at the salary grade of D38 in the PKA service.
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- F [27] It is quite clear that the real complaint of the respondent is that he was paid a lower pension than his counterparts in the PKA service not only during the pension readjustment exercise in 1981 but also at the time of retirement in 1971. This much appears in the following paragraphs of his affidavit in support of the judicial review application where “LPK” stands for Lembaga Pelabuhan Kelang:
- G 13. Saya dengan sesungguhnya menyatakan bahawa sewaktu proses Skim Gaji Suffian, terdapat kekeliruan yang dipuncakan daripada pihak Keretapi Tanah Melayu kepada pihak Pesuruhjaya Suffian melalui pemberian maklumat yang salah berkenaan kedudukan tangga gaji pemandu-pemandu keren yang sebenar. Angka gaji salah yang diberikan ialah Crane Driver Portal sebanyak \$153.36 sebulan dan Crane Driver Low Carriage sebanyak \$127.44 sebulan.
- H 14. Saya dengan sesungguhnya menyatakan bahawa berikutan dengan pemberian maklumat yang salah berkenaan kedudukan tangga gaji pemandu-pemandu keren yang sebenar tersebut, kedudukan Skim gaji pemandu-pemandu keren mengikut tangga gaji Suffian telah diletakkan di bawah angka gaji adalah Crane Driver Portal (D-5) sebanyak \$300.00 sebulan dan Crane Driver Low Carriage sebanyak \$240.00 sebulan.
- I

15. Saya dengan sesungguhnya menyatakan bahawa walau bagaimanapun, kedudukan Skim gaji pemandu-pemandu keren mengikut tangga gaji Suffian yang sepatutnya mengikut pengiraan angka gaji yang sebenar adalah Crane Driver Portal (D-5) sebanyak \$480.00 sebulan dan Crane Driver Low Carriage (D-38) sebanyak \$375.00 sebulan.

A

16. Saya dengan sesungguhnya menyatakan bahawa Pemandu-pemandu keren L.P.K adalah menerima Gaji Skim Harun pada 01.05.1969 dengan angka gaji yang Crane Driver Portal (D-5) sebanyak \$480.00 sebulan dan Crane Driver Low Carriage (D-38) sebanyak \$375.00 sebulan manakala gaji saya dan rakan-rakan lain pula tidak diletakkan di dalam tangga gaji seperti yang sama.

B

17. Saya dengan sesungguhnya menyatakan bahawa pihak KTM hanya menawarkan satu Skim Gaji Sementara dengan angka gaji untuk Crane Driver Portal adalah sebanyak \$360.00 sebulan manakala Crane Driver Low Carriage sebanyak \$280.00 sebulan dan Skim Gaji Sementara tersebut hanyalah semata-mata untuk memudahkan kerja-kerja pengiraan Pencen/Ganjaran dan ianya adalah tidak dicatatkan dalam Bukan Skim Suffian.

C

D

18. Saya dengan sesungguhnya percaya bahawa mengikut Seksyen 10G, pengiraan Ganjaran Pembayaran pencen saya adalah sepatutnya dikira dalam kadar $1/500 \times$ Gaji terakhir (last drawn salary). Ini adalah kerana kami adalah kakitangan kerajaan yang telah diberhentikan kerja sebelum genap 55 tahun, tanpa menikmati segala hak-hak keistimewaan, tetapi segala ganjaran dan pencen kami tidak dikira seperti kadar yang tersebut di atas.

E

19. Saya dengan sesungguhnya juga menyatakan bahawa kedudukan angka gaji mengikut skim gaji baru adalah seperti berikut:

(i) Skim Gaji Suffian/Harun
(Mulai 01.05.1969 hingga 31.12.1975)

F

a. Crane Driver Portal (D17-5)
= \$480.00

b. Crane Driver Low Carriage (D-38)
= \$375.00

G

(ii) Semakan Gaji Baru (Mulai dari 01.07.1980)

a. Crane Driver Portal (D-5)
= \$720.00

H

b. Crane Driver Low Carriage (D-38)
= \$630.00

I

A 20. Saya dengan sesungguhnya juga menyatakan bahawa mulai 01.07.1980, gaji baru yang patut diterima adalah seperti dicatitkan di atas, tetapi pihak K.T.M. telah membuat kesalahan di dalam memberikan maklumat dengan meletakkan skim gaji seperti berikut:

(a) Crane Driver Portal (D-5)
= \$510.00

B (b) Crane Driver Low Carriage (D-38)
= \$420.00

[28] In the above paragraphs, the respondent alleged that his last drawn salary was lower than that of his counterparts in the PKA service because of the wrong information supplied to the Suffian Commission that revised Government salaries in the late 1960s. In para. 16, he also stated that his counterparts in the PKA were remunerated under the “Skim Gaji Harun”. The “Skim Gaji Harun” was applicable only to employees of statutory bodies and local authorities. However, the respondent did not complain about his lower last drawn salary when compared to his counterparts in the PKA service until the exercise of readjustment of pensions in accordance with the PAA, which was carried out in 1981. That exercise had nothing to do with salary revision carried out under the Suffian Salary Commission much earlier as correctly submitted by the learned SFC. The learned High Court Judge did not make any finding that the last drawn salary of the respondent at the time of his retirement in 1971 was wrongly calculated either. In the premises, the Sifir Pemindahan Gaji (Salary Transfer Multiplication Table) is applicable for the purpose of pension readjustment in respect of abolished positions in the Government service. We are also of the view that the learned SFC is correct in his submission that if the request of the respondent was acceded to by the PSD, he would be getting the same benefit as his counterparts in the PKA service, a statutory body which he elected not to join.

Conclusion

G [29] In conclusion, we would observe that interference with the administrative decision of a public body would only be justified if the decision-making process was flawed. The applicant must demonstrate illegality, irrationality or procedural impropriety (see *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 373). In the instant case, H nothing of the sort has been demonstrated. In fact, between 1982 to 2016, the Pensions Division had made attempts to address the grievance of the respondent by calling for further information from his former employer (KTMB) and the workers union. But ultimately, as the respondent did not join the PKA service, the PSD was unable to accede to his request. For all I the above reasons, we are of the view that the decision of the learned High Court Judge cannot be sustained. We therefore allow the appeal and set aside the decision of the High Court with no order as to costs.
